IN THE

Supreme Court of the United States

OCTOBER TERM, 1945.

No.....

HAROLD M. STEINER,

Petitioner,

vs.

THE UNITED STATES OF AMERICA,

Respondent.

PETITIONER'S BRIEF IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI TO CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT.

ERROR RELIED ON.

The United States Circuit Court of Appeals for the Seventh Circuit erred in holding that in a criminal cause prosecuted by the United States before a jury, for alleged violation of a maximum price regulation, where the charge against the defendant is a sale of a commodity, and the undisputed evidence discloses but a delivery of the commodity under a written contract of bailment, if the Trial Court and the Circuit Court of Appeals are convinced that

it was the purpose of the defendant thus to evade a maximum price regulation by the written contract, it was proper for the Trial Court to instruct the jury, as a matter of law, that the written contract of bailment did actually constitute a sale, and was justified in declining to give to the jury, at the request of the defendant, the following instruction:

> "If these contracts have been voluntarily executed by the parties whose signatures they bear, and as between them there was no extraneous understanding or agreement to nullify any provision expressed in the instrument, the transaction evidenced thereby is a lease of the chattel and not its sale."

ARGUMENT.

The instructions quoted in the petition herein, in the face of the refusal of the trial court to give those tendered and requested by the petitioner as in the petition quoted, are essentially more prejudicial than those of similar tenor in criminal cases often condemned by this Court as deprivative of the constitutional rights of the defendant. In *Chaffee, et al.*, v. *U. S.*, 85 U. S. (18 Wall) 516, 21 L. ed. 908, the court instructed that the United States had made a *prima facie* case and it devolved upon the defendants to give exculpatory explanation of that case, otherwise guilt had been established. This Court said of that instruction (loc. cit. p. 546):

> "The instruction sets at naught established principles, and justifies the criticism of counsel that it substantially withdrew from the defendants their constitutional right of trial by jury, and converted what at law was intended for their protection—the right to refuse to testify—into the machinery for their sure destruction."

Here the trial court went even further by declaring of the contracts of bailment, as matter of law:

> "These instruments are not to be construed as or to be given the legal effect of a lease in fact, regardless of the fact that the people who signed them are designated 'lessor' or 'lessee',"

and

> "These instruments, in and of themselves, do not constitute a defense to the violations charged in the various counts of the indictment,"

thus even withdrawing from the jury's consideration the question of whether the parties did or did not intend to make a contract of bailment, and, in effect, declaring that,

in the circumstances, the jury must find that they intended a sale in violation of law.

Less constraining upon the jury was the instruction condemned by this Court in *Quercia* v. *U. S.*, 289 U. S. 466 (loc. cit. 472), 77 L. ed. 1321, where the trial court made a specific statement of fact derogatory of the defendant's testimony and later advised the jury that it was but the opinion of the judge with which they were not bound to coincide. But this Court said:

> "His definite and concrete assertion of fact, which he had made with all the persuasiveness of judicial utterance, as to the basis of his opinion, was not withdrawn. His characterization of the manner and testimony of the accused was of a sort most likely to remain firmly lodged in the memory of the jury and to excite a prejudice which would preclude a fair and dispassionate consideration of the evidence."

Here the court made the derogatory statement not as one of fact, but the jury were directed to take it as a positive pronouncement of the law, positively binding upon them.

The suggestion by the Circuit Court of Appeals that the following instruction given by the trial court at defendant's request probably cured any harm that might have otherwise resulted, *i. e.*,

> "While a deceitful contrivance or fraudulent device to evade the provisions of a lawful regulation may not be legally resorted to for effective accomplishment of the evasion, yet if the defendant, in good faith, conscientiously believed that he was not violating the law in anything that he did do or failed to do as shown by the evidence, he is not guilty of willfully violating the regulation. This is true notwithstanding his act or omission may, as a matter of law, constitute an evasion of the provisions of a regulation,"

does not appear tenable, especially when the District Judge, in the hearing of the jury, refused petitioner's request to instruct the jury thus:

> "If these contracts have been voluntarily executed

by the parties whose signatures they bear, and as between them there was no extraneous understanding or agreement to nullify any provision expressed in the instrument, the transaction evidenced thereby is a lease of the chattels and not its sale,".

Petitioner earnestly contends that to hold, in the light of the record herein, that the trial court was correct in exercising the unprecedented prerogative of appraising the evidence as being so strongly against the petitioner as, in effect, to declare him guilty as matter of law, leaving only to the jury the formal memorialization of that dictum by subscribing a verdict, will be tantamount to a judicial repeal of the Sixth Amendment to our Constitution, and a denial of the writ in this instance, will stand as *prima facie* sanction to that result. Petitioner believes the writ should be ordered to issue as prayed.

Respectfully submitted,

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